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158000

**IN THE CIRCUIT COURT OF THE COUNTY OF DAVIDSON**  
**STATE OF TENNESSEE**

**FILED**

2009 MAY 28 AM 8:47

RICHARD R. ROOKER, CLERK

*C. H. Rooker* D.C.

SANDRA RED BEAR, SURVIVING SPOUSE )  
OF MARCUS RED BEAR, DECEASED, )  
INDIVIDUALLY, AND SANDRA RED BEAR )  
AS THE MOTHER AND GUARDIAN )  
OF MINORS ALLYSSA RED BEAR, )  
MARCUS RED BEAR, JR., )  
MALANI RED BEAR, GABRIELLE )  
RED BEAR, EDEN RED BEAR, )  
CAMIEO RED BEAR, MARIAH RED BEAR, )  
AND ACHILLES RED BEAR, CHILDREN OF )  
THE DECEASED, )

Plaintiffs, )

vs. )

CSX TRANSPORTATION, INC. )  
c/o Registered Agent: )  
Corporation Service Company )  
2908 Poston Avenue )  
Nashville, Tennessee 37203 )

Defendant. )

Docket No: 09C1817  
Jury Demanded

**COMPLAINT**

**COUNT I**  
**WRONGFUL DEATH**

COMES NOW Plaintiff Sandra Red Bear, the surviving spouse of Marcus Red Bear, deceased, individually, and as the mother and guardian of Allyssa Red Bear, Marcus Red Bear, Jr., Malani Red Bear, Gabrielle Red Bear, Eden Red Bear, Camieo Red Bear, Mariah Red Bear, and Achilles Red Bear, the children of the deceased, by and through her undersigned counsel, and for Count I of her cause of action against Defendant CSX Transportation, Inc., a corporation, states as follows:

1. Plaintiff Sandra Red Bear is the surviving spouse of Marcus Red Bear, deceased.

2. Plaintiff Sandra Red Bear is the mother and guardian of Allyssa Red Bear, Marcus Red Bear, Jr., Malani Red Bear, Gabrielle Red Bear, Eden Red Bear, Camieo Red Bear, Mariah Red Bear, and Achilles Red Bear.

3. Allyssa Red Bear, Marcus Red Bear, Jr., Malani Red Bear, Gabrielle Red Bear, Eden Red Bear, Camieo Red Bear, Mariah Red Bear, and Achilles Red Bear are all children of the deceased.

4. At all times pertinent herein Plaintiff Sandra Red Bear and her minor children were residents of the County of Davidson, State of Tennessee.

5. The defendant is now and was at all times herein mentioned a corporation duly organized and existing according to law engaged in business as a common carrier by railroad and interstate commerce and does business within this Court's geographical jurisdiction.

6. On or about May 31, 2008 plaintiff's decedent, Marcus Red Bear, was struck and killed by one or more trains owned and operated by defendant on tracks near the intersection of East Trinity Lane and Richard G. Adams Drive in Nashville, Tennessee.

7. Each of the defendant's trains had a functioning video camera. However, all video footage from these trains for the relevant time period was erased before the police or any other local authorities were allowed to review it.

8. The aforesaid occurrence and the injuries and death of plaintiff's decedent, as well as the injuries suffered by plaintiff and her minor children, resulted in whole or in part from defendant's negligence in one or more of the following respects, to wit:

- (a) Defendant by and through its employees operated its train at an excessive rate of speed given the conditions in the area at the time of the occurrence.
- (b) Defendant operated a train that did not have a functioning headlight.
- (c) Defendant by and through its employees failed to sound an appropriate warning as they approached plaintiff's decedent.
- (d) Defendant by and through its employees failed to attempt to slow the train when they became aware of the presence of plaintiff's decedent near the track.
- (e) Defendant by and through its employees failed to keep a proper lookout so as to be aware of the presence of plaintiff's decedent near the track.
- (f) After plaintiff's decedent was struck, defendant, by and through its agents, failed to stop the train to determine what if any medical attention could be rendered to plaintiff's decedent in an effort to avoid his death.
- (g) Other acts and omissions that become known during discovery.

9. As a direct and proximate result of the aforementioned negligent acts or omissions on the part of defendant, plaintiff's decedent suffered loss of time and injuries and damages in the form of mental and physical suffering that included but was not limited to the following injuries: cutaneous lacerations and abrasions, skull fractures, brain avulsion, cervical spine fractures, lacerations of the heart, lung, liver and spleen, fractures of all ribs and pelvis, fractures of the left humerus, left radius, ulna, and left and right femurs, and partial traumatic amputation of the left hand. This resulted in decedent experiencing severe pain and suffering before his death.

10. As a direct and proximate of the aforementioned negligent acts or omissions on the part of defendant, plaintiff and her minor children suffered injuries and damages in the form

of both mental and physical suffering, loss of support, guidance, counseling, care, and loss of decedent's income. In addition, plaintiff incurred expenses for the burial of plaintiff's decedent.

WHEREFORE, Plaintiff Sandra Red Bear, individually and as mother and guardian of decedent's minor children, sues for judgment against Defendant CSX Transportation, Inc., in the sum of Three Million Five Hundred Thousands Dollars (\$3,500,000) damages and demands a jury to try this cause.

**COUNT II**  
**SURVIVAL ACTION**

COMES NOW Plaintiff Sandra Red Bear, the surviving spouse of Marcus Red Bear, deceased, individually, and as the mother and guardian of Allyssa Red Bear, Marcus Red Bear, Jr., Malani Red Bear, Gabrielle Red Bear, Eden Red Bear, Camieo Red Bear, Mariah Red Bear, and Achilles Red Bear, the children of the deceased, by and through her undersigned counsel, and for Count II of her cause of action against Defendant CSX Transportation, Inc., a corporation, states as follows:

1. Plaintiff Sandra Red Bear is the surviving spouse of Marcus Red Bear, deceased.
2. Plaintiff Sandra Red Bear is the mother and guardian of Allyssa Red Bear, Marcus Red Bear, Jr., Malani Red Bear, Gabrielle Red Bear, Eden Red Bear, Camieo Red Bear, Mariah Red Bear, and Achilles Red Bear.
3. Allyssa Red Bear, Marcus Red Bear, Jr., Malani Red Bear, Gabrielle Red Bear, Eden Red Bear, Camieo Red Bear, Mariah Red Bear, and Achilles Red Bear are all children of the deceased.

4. At all times pertinent herein Plaintiff Sandra Red Bear and her minor children were residents of the County of Davidson, State of Tennessee.

5. The defendant is now and was at all times herein mentioned a corporation duly organized and existing according to law engaged in business as a common carrier by railroad and interstate commerce and does business within this Court's geographical jurisdiction.

6. On or about May 31, 2008 plaintiff's decedent, Marcus Red Bear, was struck and killed by one or more trains owned and operated by defendant on tracks near the intersection of East Trinity Lane and Richard G. Adams Drive in Nashville, Tennessee.

7. Each of the defendant's trains had a functioning video camera. However, all video footage from these trains for the relevant time period was erased before the police or any other local authorities were allowed to review it.

8. The aforesaid occurrence and the injuries and death of plaintiff's decedent, as well as the injuries suffered by plaintiff and her minor children, resulted in whole or in part from defendant's negligence in one or more of the following respects, to wit:

(a) Defendant by and through its employees operated its train at an excessive rate of speed given the conditions in the area at the time of the occurrence.

(b) Defendant operated a train that did not have a functioning headlight.

(c) Defendant by and through its employees failed to sound an appropriate warning as they approached plaintiff's decedent.

(d) Defendant by and through its employees failed to attempt to slow the train when they became aware of the presence of plaintiff's decedent near the track.

(e) Defendant by and through its employees failed to keep a proper lookout so as to be aware of the presence of plaintiff's decedent near the track.

(f) After plaintiff's decedent was struck, defendant, by and through its agents, failed to stop the train to determine what if any medical attention could be rendered to plaintiff's decedent in an effort to avoid his death.

(g) Other acts and omissions that become known during discovery.

9. As a direct and proximate result of the aforementioned negligent acts or omissions on the part of defendant, plaintiff's decedent suffered loss of time and injuries and damages in the form of mental and physical suffering that included but was not limited to the following injuries: cutaneous lacerations and abrasions, skull fractures, brain avulsion, cervical spine fractures, lacerations of the heart, lung, liver and spleen, fractures of all ribs and pelvis, fractures of the left humerus, left radius, ulna, and left and right femurs, and partial traumatic amputation of the left hand. This resulted in decedent experiencing severe pain and suffering before his death.

WHEREFORE, Plaintiff Sandra Red Bear, sues for judgment against Defendant CSX Transportation, Inc. in the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000) damages together with her costs herein expended, for sanctions against CSX Transportation, Inc. for the spoliation of relevant evidence, and for such other and further relief as the Court deems just and proper in these circumstances and demands a jury to try this cause.

Dpqz:

Respectfully submitted,



GILREATH & ASSOCIATES  
Sidney W. Gilreath (BPR #2000)  
550 Main Street, Suite 600  
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Charles W. Armbruster III  
(pro hac vice application to be submitted)  
Michael T. Blotevogel  
(pro hac vice application to be submitted)

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Dpqz

CIRCUIT COURT SUMMONS

NASHVILLE, TENNESSEE

FILED

2009 MAY 28 AM 8:48

STATE OF TENNESSEE  
DAVIDSON COUNTY  
20<sup>TH</sup> JUDICIAL DISTRICT

☒ First  
☐ Alias  
☐ Pluries

~~SANDRA RED BEAR, SURVIVING SPOUSE OF MARCUS RED BEAR, DECEASED, INDIVIDUALLY, AND SANDRA RED BEAR AS THE MOTHER AND GUARDIAN OF MINORS ALLYSSA RED BEAR, MARCUS RED BEAR, JR., MALANI RED BEAR, GABRIELLE RED BEAR, EDEN RED BEAR, CAMIEO RED BEAR, MARIAH RED BEAR, AND ACHILLES RED BEAR, CHILDREN OF THE DECEASED~~  
Plaintiff

Vs.

CSX TRANSPORTATION, INC.

c/o Registered Agent: Corporation Service Company

2908 Poston Avenue

Nashville, Tennessee 37203

Defendant

CIVIL ACTION  
DOCKET NO: 09C1817

Method of Service:

☐ Davidson County Sheriff  
☐ Out of County Sheriff  
☐ Secretary of State  
☒ Certified Mail  
☐ Personal Service

CIRCUIT COURT CLERK  
1 PUBLIC SQUARE, ROOM 802  
P.O. BOX 196303  
NASHVILLE, TN 37219-6303

To the above named Defendant:

You are summoned to appear and defend a civil action filed against you in Circuit Court, 523 Mainstream Drive, Nashville, TN 37226, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED: 5-28-09

**RICHARD R. ROOKER**  
Circuit Court Clerk  
Davidson County, Tennessee

By

Deputy Clerk

ATTORNEY FOR PLAINTIFF or PLAINTIFF'S ADDRESS	SIDNEY GILREATH, GILREATH & ASSOCIATES 550 MAIN AVENUE, STE. 600 Address KNOXVILLE, TN 37901
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TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

**RICHARD R. ROOKER**  
Circuit Court Clerk

Received this summons for service this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SHERIFF



ADA Coordinator, Margaret Larobardiere (862-5204)